

**VOLUNTARY CLEANUP CONTRACT
10-5864-NRP**

**IN THE MATTER OF
Charleston Boat Center Site, Charleston County
and
Bankfield Holding Company, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Bankfield Holding Company, LLC, with respect to the Property located at 5133 Rivers Avenue, North Charleston, South Carolina. The Property includes approximately 1.3 acres in six parcels identified herein. In entering this Contract, the Department relies on the representations of the "Non Responsible Party Application for Voluntary Cleanup Contract" of March 2, 2010 by Bankfield Holding Company, LLC, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This contract is entered pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710 to 760, as amended on June 11, 2008; the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq., and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710 to 760 (Supp. 2008), and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq., the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et. seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq., or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "BHC" means Bankfield Holding Company, LLC.
- B. "Beneficiaries" means BHC's Non Responsible Party lenders, parents, managers, members, employees, subsidiaries, and successors, including new purchasers, lessees, heirs, devisees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of BHC. The Property is bounded generally by Rivers Avenue and commercial properties beyond to the east, residential lots and Rebecca Street beyond to the south, Willis Street and residential lots beyond to the west, and the exit ramp for the Mark Clark Expressway (I-526) to the north. Approximately 1.1 acres of the property is further identified by Tax Map Serial Numbers 472-14-00-174, 472-14-00-175, 472-14-00-176, 472-14-00-177, and 472-14-00-179. An additional 0.20 acre parcel at the north end of the Property does not have a Tax

Map Number assigned to it yet, because it was a public road (Russeldale Avenue) cut-off by the construction of the Mark Clark Expressway exit ramp.

- H. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause contamination upon release to the environment.
- I. "Waste Materials" means any contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

- 2. Based on the information known by the Department, the following are asserted for this Contract:
 - A. Owners and Operators: The available information shows that 1.1 acres of the Property originally was subdivided into at least five residential lots in the 1940's. Mr. Homer P. Norton, doing business as The Outboard Shop, Inc., began operating on one or more of the lots in approximately 1956 and eventually acquired the other lots as the business grew. The remaining 0.2 acres of the Property has been a public right-of-way, Russeldale Avenue, owned by the City of North Charleston.
 - B. Property and Surrounding areas: The Property is flat with most of it covered by pavement. It has one 14,000 square foot, metal building that served as the boat showroom, offices and repair facility.
 - C. Operating History: The Outboard Shop conducted boat sales, service, and motor repair, and dealt mainly with smaller, trailable boats. In recent years, the company did business under the name of "The Charleston Boat Center" with the same

operations. Operations ceased in 2009 and the building is now vacant.

- D. Investigations / Reports A Phase I Environmental Site Assessment (S&ME, December 11, 2009) reported that a gasoline UST (Underground Storage Tank) was removed from the Property in 1990. Soil and water samples at the time were indicative of a petroleum release. The results were reported to the Department; however, the Property was not registered with Department's UST program. Also, the Phase I reported that ASTs (Aboveground Storage Tanks) were formerly used on the Property to store used oil and gasoline, and noted the presence of a nearby drycleaner as a potential REC (Recognized Environmental Condition).

A Phase II Assessment (S&ME, February 1, 2010) reported the analytical results from three soil samples and four groundwater samples collected at three locations on the property. Samples were tested for VOC (Volatile Organic Compounds) and SVOC (Semi Volatile Organics). Analysis of a shallow groundwater sample detected 1,1,2-TCA (Trichloroethane) at 13 ppb, above its MCL (Maximum Contaminant Level) of 5 ppb, and various petroleum compounds; however, no petroleum compound was above its respective regulatory level. No significant contaminants were reported in the other groundwater samples or soil samples. At the time, the groundwater flow direction was calculated to be to the east-northeast, and it can be concluded that the nearby drycleaner is downgradient of the Property. Based on the reported flow direction, the groundwater sample that detected the 1,1,2-TCA may be slightly upgradient of the former UST and AST locations; however, given the shallow gradient and the potential for tidal influences in the area, it cannot be concluded that the contaminant has migrated onto the Property.

- E. Party Identification: BHC is a South Carolina Limited Liability Company with its principal place of business located at 5401 Netherby Lane, North Charleston, South Carolina. BHC affirms that it has the financial resources to conduct the response action pursuant to this Contract.

- F. Proposed Redevelopment: BHC will acquire the Property and intends to construct a medical office.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. BHC certifies that it and its members are Non-Responsible Parties at the Site and is eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. BHC agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by BHC, or its designee, within thirty days of the execution date of this Contract, or later date if approved by the Department's project manager, setting forth methods and schedules for response actions detailed herein. BHC acknowledges that the response actions may find distributions of existing contamination requiring additional assessment or corrective actions on the Property that cannot be anticipated with this Contract. BHC agrees to perform the additional response actions consistent with the intended uses of the Property under the purview of this Contract; however, BHC may seek an amendment of this Contract to clarify its further responsibilities. BHC shall perform all response actions required by this Contract, and any related actions of BHC's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., stormwater management and waste disposal regulations). BHC shall identify and obtain the applicable permits before beginning any action.
- 2). The Work Plan and all associated reports shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 3). The Work Plan(s) shall provide sufficient information about the proposed sampling points, collection methods, analytical methods, and other pertinent

details of the response actions.

- a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with the South Carolina Well Standards and Regulations-R.61-71. The Work Plan shall provide sufficient detail to support issuance of the well approvals.
 - c). The laboratory analyses shall be as required in the media-specific subparagraphs below, but may include: 1) the full EPA-TAL (Target Analyte List); 2) the full EPA-TCL (Target Compound List); 3) the TAL-Metals (EPA-TAL without Cyanide); 4) SVOCs (EPA-TCL Semi-Volatile Organics; or 5) VOCs (EPA-TCL Volatile Organic Compounds.
 - d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL (Soil Screening Level) for a compound shall be the "MCL-Based SSL" if listed.
- 4). The Work Plan shall include the names, addresses, and telephone numbers of BHC's consulting firm(s), analytical laboratories, and BHC's contact person for matters relating to this Contract.
 - a). The analytical laboratory shall possess applicable Certification, as per South Carolina R.61-81, for the test methods to be used during this assessment.
 - b). BHC shall notify the Department in writing of changes in the contractor or laboratory.
 - 5). The Department will notify BHC in writing of approvals or deficiencies in the Work Plan.
 - 6). BHC, or its designee, shall respond in writing within thirty days to the Department's comments with regards to deficiencies.
 - 7). BHC shall implement the Work Plan upon written approval from the Department.
 - 8). BHC shall inform the Department at least five (5) working days in advance of all

field activities, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.

- 9). BHC shall preserve items that may: 1) provide evidence of a Potentially Responsible Party's involvement at the site; 2) lead to the discovery of other areas of contamination; or 3) contain environmental information. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. BHC shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Assess Waste Materials and Segregated Sources:

- 1). BHC shall assess Waste Materials and Segregated Sources upon their discovery on the Property at any time during assessment, corrective action, or development activities.
- 2). BHC's assessment shall include characterization of the contaminant concentrations, and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable.
- 3). BHC shall expeditiously stabilize or remove from the Property any Segregated Source that has not yet released all contents to the environment upon discovery.
- 4). BHC shall notify the Department if a release of contamination occurs as a result of its assessment, stabilization or removal actions. BHC shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

C. Assess groundwater quality:

- 1). BHC shall assess groundwater quality and the groundwater flow direction across the Property. Assessment shall include samples from a minimum of three monitoring wells installed to bracket the water table. The wells shall be of sufficient construction to allow collection of measurements and suitable samples

for the analytical parameters specified below. The wells shall be located as follows:

- a). One well at a presumed upgradient location near the southernmost Property boundary and Willis Street, and;
 - b). Two wells at presumed downgradient locations along the Property boundary bordering Rivers Avenue.
- 2). Samples from all monitoring wells shall be analyzed for TAL- Metals, VOCs and SVOCs. In addition, one downgradient well shall be analyzed for the full TAL/TCL parameters.
 - 3). Groundwater elevation in each well shall be determined.
 - 4). Groundwater quality results shall be compared to standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, and to the Regional Screening Tables values for "Tapwater", if not specified in R.61-58.

D. Evaluate and control potential impacts to indoor air:

- 1). BHC shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with the building construction proposed to be used on the Property.
- 2). BHC's evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of 1 soil gas sample per 1500 square feet of the proposed footprint of buildings to be constructed on the site over areas potentially subject to Vapor Intrusion. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow gas samples (using an depth-appropriate attenuation factor). The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from

Groundwater and Soils” or supplemental EPA guidance.

- 3). The Department may allow BHC to implement Vapor Intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 4). BHC shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the predicted indoor air concentration exceeds a 10⁻⁶ risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

E. Institute reasonable contamination control measures:

- 1). BHC shall take reasonable measures to limit or prevent human exposure to existing contamination on the Property:
 - a). Measures shall be required for Waste Materials and contaminated media with concentrations in excess of appropriate human-health and ecological risk-based exposure standards via plausibly complete routes of exposure. The measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the contamination.
 - i. The measures shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
 - ii. BHC shall provide appropriate documentation to demonstrate satisfactory completion of the control measures for Department review and approval prior to obtaining a Certificate of Completion.
 - b). BHC shall remove from the Property any Segregated Sources of contamination that have not yet released all contents to the environment.
 - i. The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - ii. BHC shall document the characterization and ultimate disposition of the

materials to the Department within sixty (60) days of removal of any material from the Property.

F. Monitor and/or abandon the monitoring wells:

- 1). BHC shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to contamination.
- 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 3). BHC shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. BHC shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. BHC agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by BHC.

PUBLIC PARTICIPATION

6. BHC and the Department will foster public participation to implement this Contract as follows:
 - A. The Department will seek public comment and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. statutes upon signature of this Contract by BHC.
 - B. BHC shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected within one day of the

Department's public announcement about the Contract in a newspaper of general circulation in the community.

- 1). The sign will state "Voluntary Cleanup Project by Bankfield Holding Company, LLC under Voluntary Cleanup Contract 10-5864-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of BHC. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.
- 3). BHC shall submit photographs of the sign and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). BHC agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). BHC shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, BHC shall restore the sign within two days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. BHC shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within ninety (90) days of the execution date of this Contract and semi-annually thereafter.

A. The updates may be in summary letter format, but should include information about:

- 1). The actions taken under this Contract during the previous reporting period;
- 2). Actions scheduled to be taken in the next reporting period;
- 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
- 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

B. The Department's project manager may allow an extended schedule between updates based on site-specific conditions.

SCHEDULE

8. BHC shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the contamination or prevent unacceptable exposures. BHC shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. BHC or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Covenant) for the Property. At a minimum, the Covenant shall prohibit drinking water use of groundwater collected from the Property and shall require buildings, pavement, or ornamental planting beds cover the Property except during construction activities. The Covenant may include additional requirements to minimize human exposures if contamination exceeds residential standards after completing the response actions pursuant to this Contract. The recorded Covenant shall be incorporated into this contract as an Appendix and shall be implemented as follows:

A. The Department shall prepare and sign the Covenant prior to providing it to BHC. An authorized representative of BHC or its Beneficiaries shall sign the Covenant within ten days of receipt. All signatures shall be witnessed, and signed and sealed

by a notary public.

- B. BHC or its Beneficiaries shall file the executed Covenant with the Registrar of Deeds for the county where the Property is located.
- C. BHC or its Beneficiaries shall provide a copy of the recorded Covenant to the Department within sixty days of the Department's execution. The copy shall show the date and Book and Page number where the Covenant has been recorded.
- D. In the event that contamination exceeds residential standards on a portion of the Property, BHC or its Beneficiaries may create a new parcel that will be subject to the Covenant.
- E. The Covenant shall be recorded on the master deed of any residential development planned for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Covenant.
- F. The Covenant shall reserve a right of entry and inspection for BHC or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). BHC or its Beneficiaries shall ensure that the restrictions established by the Covenant remain on any subdivided property.
 - 2). BHC or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Covenant regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- G. BHC or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Covenant to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.

H. The Department may amend the Covenant in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change; however, said amendment shall not be applied retroactively unless expressly provided for in the enabling legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment shall be duly executed and recorded with the county using procedures similar to those detailed above.

NOTIFICATION

10. All correspondence required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of correspondence shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail; 2) Certified or Registered Mail; 3) Commercial delivery service company; or, 4) hand delivery to the other party.

A. All correspondence to the Department including two hardcopies of all Work Plans and reports, and one hardcopy of the Health and Safety Plan should be submitted to:

Craig V. Dukes
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. BHC's designated contact person as of the effective date of this contract shall be:

Robert T. Hamilton
205 Golf Road
Summerville SC 29483

FINANCIAL REIMBURSEMENT

11. BHC or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereof, and may include costs incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to BHC on a quarterly basis. All costs are payable within thirty days of the Department's invoice submitted to:

Robert T. Hamilton
205 Golf Road
Summerville SC 29483

ACCESS TO THE PROPERTY

12. BHC agrees the Department has an irrevocable right of access to the Property after BHC acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion will be issued on the Property as follows:

A. BHC shall request a Certificate of Completion after the response actions are completed and any required Covenants are recorded pursuant to this Contract. The

request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.

- B. The Department will issue the Certificate of Completion with its covenant not to sue upon determining that BHC has successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions are complete but all activities on the Property cannot be completed due to site-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that BHC or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if BHC or its Beneficiaries do not satisfactorily complete the requirements of the Contract.

ECONOMIC BENEFITS REPORTING

- 14. BHC or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two years after the execution date of this Contract, and annually until two years after redevelopment of the Property is complete. BHC shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the site for property acquisition and capital improvements.

TRANSFER OF CONTRACT

- 15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, BHC, and its Beneficiaries. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion

of the Property:

- A. BHC or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. If the Certificate of Completion has not been issued, BHC or its Beneficiaries shall seek approval from the Department prior to assigning or transferring the protections and obligations of this Contract to a new individual or entity. The protections shall not inure to an individual or entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of documentation from the new individual or entity showing it:
 - 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
 - 4). Will assume the protections and all obligations of this Contract and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.
- C. If the Certificate of Completion has been issued and the portion of the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, BHC or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.
 - 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.
- D. If a Certificate of Completion has been issued and the Property is not subject to a

Covenant or other continued obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

16. BHC, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party.

Termination shall be subject to the following:

A. The Department may terminate this Contract only for cause and shall provide opportunity for BHC or its Beneficiaries to correct causes of termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms of this Contract;
- 2). Change in BHC's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of BHC or its Beneficiaries to implement appropriate response actions for additional contamination or releases caused by BHC or its Beneficiaries, or
- 5). Providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by BHC or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this contract; or,
- 7). Failure by BHC or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of BHC's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

B. Should BHC or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by BHC or its Beneficiaries have been stabilized or mitigated such that the Property

does not pose hazards to human health or the environment that did not exist before the response actions identified in this Contract.

- C. Termination of this Contract by any party does not end the obligations of BHC or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract prior to the date that any such termination takes effect. Payment for such costs shall become immediately due.
- D. The protections provided to BHC or its Beneficiaries shall be null and void as to any party who willfully or intentionally participated in actions giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers, employees, assigns, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party who did not willfully or intentionally participate in the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. BHC and its Beneficiaries are entitled to the protections and benefits provided by S.C. statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
 - 1). Protection from CERCLA contribution claims.
 - 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
 - 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.
- B. Effective on the date the Certificate of Completion is issued by the Department:
 - 1). The Department's covenant not to sue BHC and its Beneficiaries for Existing Contamination except for releases and consequences caused by BHC or its Beneficiaries.

- 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any contamination, releases, and consequences caused by BHC and its Beneficiaries. The Department retains all rights under State and Federal laws to compel BHC and its Beneficiaries to perform or pay for response activity for contamination, releases and consequences created by BHC or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than BHC and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than BHC and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY BHC

19. BHC retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. BHC and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for contamination, releases, and consequences they cause or contribute to the Site. However, BHC and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. BHC and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered contamination is not attributable to BHC or its Beneficiaries. BHC and its Beneficiaries shall make this demonstration to the Department's satisfaction in

accordance with State or Federal Law applicable to such newly discovered contamination. For purposes of this clause, newly discovered contamination means finding types of contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY BHC AND ITS BENEFICIARIES

21. In consideration of the protections from the Department, BHC and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions, or the Department's willful violation of the terms of this agreement.

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Office of General Counsel

DATE: _____

Bankfield Holding Company, LLC

BY: _____

DATE: _____

Printed Name and Title